## UNITED STATES DISTRICT COURT WESTERN DISTRICT OF NORTH CAROLINA CHARLOTTE DIVISION 3:13-cv-625-RJC-DCK

LC AMERICA, INC.,	)
Plaintiff,	)
vs.	ORDER
NIVANA SPECIALTY FOODS, INC.,	)
Defendant.	)
	)

**THIS MATTER** comes before the Court Defendant's Motion for Taxation of Costs, (Doc. 19), and Plaintiff's response thereto, (Doc. 20). It is ripe for review.

On June 10, 2014, this Court dismissed this case without prejudice for lack of personal jurisdiction over Defendant. (Doc. 17). Two days later, Defendant filed this motion requesting that the Court award \$400 for costs under Federal Rule of Civil Procedure 54(d)(1), which provides that "[u]nless a federal statute, these rules, or a court order provides otherwise, costs – other than attorneys fees – should be allowed to the prevailing party."

A district court has discretionary equitable power to award costs under Rule 54(d)(1). See In re Paoli R.R. Yard PCB Litigation, 221 F.3d 449, 458 (3d Cir. 2000). The Fourth Circuit has not addressed the question of whether a party having a case dismissed for lack of personal jurisdiction constitutes a "prevailing party," and this Court likewise declines to do so. Having reviewed Defendant's motion, the Court exercises its discretion and declines to award costs to Defendant. Accordingly, the Court **denies** Defendant's motion.

Signed: July 28, 2014

Robert J. Conrad, Jr.

United States District Judge